



Council of the
European Union

**Brussels, 8 March 2024
(OR. en)**

7523/24

**FRONT 81
MIGR 111
VISA 34
COMIX 135**

COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 8 March 2024

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: COM(2024) 108 final

Subject: Recommendation for a COUNCIL DECISION authorising the opening of negotiations on an agreement between the European Union and the Principality of Andorra on several aspects in the field of border management

Delegations will find attached document COM(2024) 108 final.

Encl.: COM(2024) 108 final



Brussels, 8.3.2024
COM(2024) 108 final

Recommendation for a

COUNCIL DECISION

**authorising the opening of negotiations on an agreement between the European Union
and the Principality of Andorra on several aspects in the field of border management**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Background**

With this recommendation, the Commission recommends that the Council (i) authorise the Commission, as the negotiator of the agreement, to open and conduct negotiations for an agreement between the Union and the Principality of Andorra, (ii) set out directives to the Negotiator and (iii) designate a special committee in consultation with which the negotiations must be conducted.

The Principality of Andorra is an independent sovereign State, which enjoys specific relations with the neighbouring Member States, France and Spain, due to its geographical situation, small size and population, and political system. Notably, Andorra is a landlocked country, surrounded by the territories of France and Spain. There are no international airports on the territory of Andorra. There is currently a heliport in La Massana (Heliport Terra Guindaldes), and one at Hospital Nostra Senyora de Meritxell. Unless third-country nationals fly via helicopter from outside the Schengen area into the Andorran territory, third-country nationals need to travel through the Schengen area to reach Andorra and they undergo border checks by a Schengen State and have to comply with the obligations to enter the Schengen area in accordance with the Schengen *acquis*. Whereby in theory a helicopter (with high performance) might come to Andorra from outside the Schengen area, there is a legal obligation for the carrier to declare any inbound or outbound operation, and the Andorran Police performs controls to the passengers for any inbound or outbound operation. In addition, for flights arriving in Andorra from the European Union or a third country, an inspection of both aircrew and passengers is conducted by the Spanish authorities at one of the heliports equipped with a Schengen checkpoint, such as Reus or Girona. This special geographical situation and the distinct relationship with France and Spain pre-dating the establishment of the Union are the reasons for a '*de facto*' absence of systematic border checks between France and Andorra as well as Spain and Andorra, as normally required at the external borders of the Schengen States.¹ Andorra currently also does not issue any visas to third-country nationals. Visa-required travellers passing via the Schengen area to reach Andorra have to apply for a Schengen visa with the responsible authorities of the Schengen States.

- **Reasons for and objectives of the proposal**

The objective of the recommendation is to provide appropriate legal basis for the '*de facto*' absence of checks at the external border between France and Andorra as well as Spain and Andorra and, as a compensatory measure, to include rules on residence permits.

Upcoming changes concerning the Schengen *acquis* also require adjustments, especially the future entry into operation of the new EU information systems, including the Entry/Exit

¹ E.g. the President of France is the Co-Prince of Andorra, Article 43 of the Andorran Constitution of 1993, [constitució anglès \(consellgeneral.ad\)](#).

System ('EES')² and the European Travel Information and Authorisation System ('ETIAS')³. Residence permits issued by Andorra to third-country nationals currently do not allow their holders to travel freely within the Schengen area. Whereas nationals of Andorra are exempt from the obligation to be registered in the EES and in ETIAS⁴, third-country nationals holding a residence permit of Andorra transiting through Member States to access their place of residence in Andorra will normally be recorded in the EES at entry in the Schengen area (typically in France or Spain). As they would not be recorded in the EES leaving the Schengen area upon entry into Andorra, they would be automatically recorded in the EES as 'overstayers' if their presence exceeds the time allowed to stay within the Schengen area. The overstay would then have a negative impact on these *bona fide* third-country nationals, in particular concerning their applications for a Schengen visa, an ETIAS travel authorisation, long-stay visa or residence permit.

In addition, the objective of the recommendation is to close a current gap by agreeing on rules for Andorra to issue residence permits to third-country nationals. Currently, residence permits to third-country nationals are not subject to any verification by the Member States while their holders can '*de facto*' access and move freely in the Schengen area without having a valid Schengen visa or an ETIAS travel authorisation.

The goal of this agreement would be to lift the border checks on persons and grant a Schengen-wide recognition of residence permits issued by Andorra to third-country nationals.

The agreement should therefore include that in case a third-country national intends to arrive directly in Andorra, Andorra ensures that they first undergo border checks carried out by France or Spain.

By exempting them from the obligation to register in the EES, this would prevent *bona fide* third-country nationals holding Andorran residence permits from being registered as 'overstayers' in the EES. Third-country nationals holding Andorran residence permits would have visa-free access to the Schengen area for up to 90 days in any 180-day period in line with the relevant provisions of Union law and would be exempt from the obligation to register in the EES and from the obligation to hold a visa or ETIAS travel authorisation to enter and stay in the Schengen area.

To give the residence permits issued or renewed by Andorra a Schengen-wide effect, it is essential that the high-level of security of the Schengen area is guaranteed. Therefore, the agreement would provide for Andorra to undertake that issuing, renewing or withdrawing Andorran residence permits for third-country nationals would be conditional on a security assessment to be carried out by France or Spain. France or Spain – according to a predetermined distribution key – would carry out a binding security assessment before

² Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (*OJ L 327, 9.12.2017, p. 20*), Article 2(3)(f) ('EES Regulation').

³ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (*OJ L 236, 19.9.2018, p. 1*), Article 2(2)(d) ('ETIAS Regulation').

⁴ Based on Article 2(3)(f) of the EES Regulation; and Article 2(2)(g) of the ETIAS Regulation.

Andorra can issue or renew those residence permits, in particular checks in the relevant EU, national, and international databases including checks ensuring the respect and effectiveness of EU restrictive measures. Following a positive opinion issued within a set timeframe, Andorra would issue or renew those residence permit in the uniform format established by Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals⁵ and France or Spain would perform all necessary operations in the Visa Information System⁶. A negative opinion issued by France or Spain would result in Andorra rejecting or withdrawing the residence permit application or the application to renew a residence permit. France or Spain would need to notify, in accordance with the Schengen Borders Code (Article 39), the residence permits issued by Andorra to third-country nationals to give them a Schengen-wide effect.

The envisaged agreement should provide for rules requiring that residence permits already issued by Andorra to third-country nationals at the time of the agreement's entry into force are to be replaced by residence permits issued in accordance with the agreement within two years from its entry into force. The agreement should provide that existing residence permits issued by Andorra to third-country nationals are notified to France or Spain to perform checks in the relevant databases and, if required, to request Andorra to withdraw these permits on grounds of public policy or internal security.

The envisaged agreement should provide for an evaluation mechanism. The agreement would also need to define the modalities of the cooperation between France, Spain and Andorra to issue or renew residence permits as well as rules on appeals against decisions taken by Andorra on the basis of a negative opinion by France or Spain.

In addition, the envisaged agreement should provide that acquiring and maintaining the right to reside in Andorra would be conditional on the existence of a real connection with Andorra to be established based on actual and regular physical presence over an appropriate period of time and on other objective and verifiable criteria with the exclusion of investment in Andorra's economy or real estate, or of predetermined financial payments to Andorran authorities.

The envisaged agreement should provide for rules on the exchange of information between the law enforcement authorities of Andorra, France and Spain, including information on criminal records and information on wanted and missing persons and objects, both upon request and spontaneously, where this is relevant for the prevention, detection or investigation of crime in in Andorra, in France or in Spain, the safeguards against and the prevention of threats to public safety.

Furthermore, to ensure the high level of security and trust, the envisaged agreement should contain rules providing for the possibility of cross-border operational cooperation, such as the possibility of cross-border surveillance, cross-border 'hot pursuit' of criminal suspects, the organisation of joint patrols and other joint operations. There should also be rules allowing for the performance of enhanced police checks in the areas near the land border between the Schengen area and the territory of Andorra, for both law enforcement and migration purposes.

⁵ Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (*OJ L 157, 15.6.2002, p. 1*).

⁶ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of information between Member States on short-stay visas, long-stay visas and residence permits (VIS Regulation) (*OJ L 218, 13.8.2008, p. 60*).

Concerning falsely presumed touristic ‘overstayers’ registered in the EES, i.e. third-country nationals, visa-required or visa-exempt and registered in the EES on entry into the Schengen area, whose stay in the territory of Andorra is automatically calculated as a stay in the Schengen area due to the absence of border checks, the envisaged agreement should provide that, except for residents in Andorra, time spent in Andorra will be counted as time spent in the Schengen area for the purpose of the calculation of authorised stay.

Furthermore, the envisaged agreement should also provide that in case Andorra was to issue short-stay or long-stay visas to third-country nationals in the future, the agreement would need to be revised accordingly.

The envisaged agreement should provide for a mechanism whereby future relevant developments of Union law would, where necessary, be reflected in adaptations to the agreement. The envisaged agreement should also include a provision whereby the agreement would be terminated by the Union in case the adaptation is not effected.

Relationship with existing or future Union agreements

In December 2023, the EU and Andorra finalised negotiations on an association agreement that will result in Andorra applying Directive 2004/38/EC of the European Parliament and of the Council⁷ to Union citizens and their family members, including third-country nationals. However, the issues that could potentially fall under this recommendation are not in the scope of the negotiations on an association agreement.

The conclusion of the association agreement is now subject to the internal procedures of both parties. Once the association agreement is concluded and will have entered into force, third-country nationals who are family members of Union citizens to whom Directive 2004/38/EC applies and who hold a residence card pursuant to Directive 2004/38/EC issued by Andorra would be exempt from the obligation to be registered in the EES⁸, in ETIAS⁹, and to hold a visa¹⁰. As a consequence, the provisions of the EES Regulation regarding the calculation of the duration of the authorised stay and the generation of alerts to Member States when the authorised stay has expired would not apply to third-country nationals who are family members of a Union citizen to whom Directive 2004/38/EC applies and who do not hold a residence card pursuant to Directive 2004/38/EC. Similarly, family members of nationals of Andorra to whom Directive 2004/38/EC would apply would fall within the scope of the relevant EU *acquis* referring to members of the family of a national of a third country enjoying the right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States, on the one hand, and a third country, on the other.

In view of the above, once the association agreement will have entered into force, family members of Union citizens to whom Directive 2004/38/EC applies should not be covered by the provisions of the envisaged agreement applicable to the issuance of residence permits by Andorra to third-country nationals.

⁷ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (*OJ L 158, 30.4.2004, p. 77*).

⁸ Article 2(1)(b) EES Regulation.

⁹ Article 2(2)(b) ETIAS Regulation.

¹⁰ Article 5(2) of Directive 2004/38/EC.

On the other hand, should the agreement envisaged by this recommendation enter into force earlier than the association agreement, the envisaged agreement would apply to the family members of the Union citizen who are third-country nationals until the association agreement starts to apply.

2. LEGAL BASIS AND PROPORTIONALITY

The legal basis for this recommendation is Article 218(3) and (4) TFEU.

The definite substantive legal basis for the signature and conclusion of the new agreement can only be determined at the end of the negotiations, in light of its contents.

The Union is competent to conclude this international agreement with Andorra, on the aspects of border management covered by this recommendation including granting the residence permits issued by Andorra to third-country nationals Schengen-wide effect.

This envisaged agreement is required to solve issues of falsely presumed overstay and to close the identified security gaps. The envisaged agreement does not go beyond what is necessary to achieve the objectives at stake since these cannot be achieved by the Member States alone.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

As this will be a new agreement, no evaluation or fitness checks of existing instruments could be carried out. No impact assessment is required for the negotiation of this agreement.

4. IMPLEMENTATION PLANS AND MONITORING, EVALUATION AND REPORTING ARRANGEMENTS

The Commission will ensure proper monitoring of the implementation of the agreement.

Recommendation for a

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) An agreement is considered necessary to provide the legal basis for the absence of border control between France and Andorra as well as Spain and Andorra.
- (2) It appears beneficial to conclude such an agreement in view of Andorra's geographical proximity and economic interdependence with the Union.
- (3) It is required to ensure the fair treatment of third-country nationals possessing residence permits issued by Andorra at the Union's external borders.
- (4) The issuance of such residence permits by Andorra has to be conditional on a binding opinion by France or Spain based on a security assessment carried out by one of these two Member States according to a predetermined distribution key.
- (5) The agreement should allow for the conclusion of implementing administrative arrangements of an operational nature between France, Spain and Andorra on matters covered by this agreement provided that their provisions are compatible with those of the agreement and with Union law.
- (6) Negotiations should therefore be opened with a view to concluding an agreement between the European Union, of the one part, and Andorra, of the other part. The Commission should be nominated as the Union negotiator.

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, an agreement with the Principality of Andorra on several aspects in the field of border management.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with the [name of the special committee to be inserted by the Council].

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*